2958

SUPREME COURT OF THE UNITED STATES.

No. 269.

THE INSURANCE COMPANY OF THE VALLEY OF VIRGINIA, PLAINTIFF IN ERROR,

vs.

MOSES C. MORDECAI.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE WESTERN DISTRICT OF VIRGINIA.

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GIDEON, Print.

STATE OF VIRGINIA, *to wit:*

Pleas at Staunton, Virginia, before the District Court of the United States for the western district of Virginia, held for the trial of civil causes, on Thursday, the seventh day of October, in the year one thousand seven hundred and fifty-eight, and in the 82d year of the independence of the United States of America.

Be it remembered that heretofore, to wit, at rules held in the office of said court on the first Monday in August, being the second day of the month, in the year aforesaid, came Moses C. Mordecai, a citizen of the State of South Carolina, by his attorney, and filed in the clerk's office of said court, in vacation thereof, his declaration against the Insurance Company of the Valley in Virginia, of a plea of debt, which declaration is in these words:

"The United States court for the fourth circuit and the western district of Virginia, held at Staunton.

"Moses C. Mordecai, a citizen of the State of South Carolina, complains of the Insurance Company of the Valley of Virginia, a body corporate, created by an act of the general assembly of Virginia, and having its chief office in the said State and the district aforesaid, who have been duly summoned to answer this action of a plea, that they render to the plaintiff the sum of four thousand five hundred and forty-six dollars, with legal interest on four thousand dollars, part thereof, from the 1st day of June, in the year 1856, until paid, which they owe to and unjustly detain from him; for that whereas the said plaintiff heretofore, to wit, on the 2d day of December, in the year 1857, at a circuit court for the United States of America held at Columbia, the sixth circuit, and the district of South Carolina, by the consideration and judgment of the said court, recovered against the said defendants the said sum of $4,546, with interest as aforesaid, above demanded, which in and by the said court were then and there adjudged to the said plaintiff for his damages, which he had sustained, as well by reason of the non-performance by the said defendants of certain promises and undertakings there lately made by the said defendants to the said plaintiff, as for his costs and charges by him about his suit in that behalf expended, whereof the defendants were convicted, as by the records and proceedings thereof remaining in the said court more fully appears, which said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated; and the said plaintiff hath not obtained any execution or satisfaction of or upon the said judgment so recovered as aforesaid, whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendants the said sum of $4,546, with interest, as above demanded. Yet the defendants (although often requested so to do) have not as yet

paid the said sum of $4,546, with interest, as aforesaid, or any part thereof, to the said plaintiff, but so to do have hitherto wholly refused and still do refuse, to the damage of the plaintiff $1,000, and therefore he brings his suit."

J. B. BALDWIN, *P. Q.*

Whereupon the defendant having been duly summoned and not appearing, on the motion of the plaintiff, it was ordered that judgment be entered for the said plaintiff against the defendant for what shall appear to be justly due to the said plaintiff, unless the defendant shall appear at the next rules and answer the plaintiff's action.

At which day, to wit, at rules held in the office of said court on the first Monday in September, being the sixth day of the month in the year last aforesaid, the defendant still failing to appear, on the motion of the plaintiff, by his attorney, it was ordered that the conditional judgment entered in this cause at the last rules stand confirmed.

And now, at this day, to wit, at a district court of the United States for the western district of Virginia, held at Staunton on the same day and year first herein mentioned, to wit, on Thursday, the 7th day of October, 1858, the following proceedings were had in open court—that is to say:

MOSES C. MORDECAI, a citizen of the State of South Carolina, Plaintiff,
against
THE INSURANCE COMPANY OF THE VALLEY OF VIRGINIA, Defendant.

Action of debt upon a judgment recovered in the circuit court of the United States of America, held for the (6th) sixth circuit and the district of South Carolina.

This day came the parties by their attorneys, and the defendant by its attorney comes and defends the wrong and injury, when, &c., and says that there is not any record of the said supposed recovery in the declaration mentioned remaining in the said court in manner and form as the said Moses C. Mordecai hath in said declaration alleged; to which plea the plaintiff, by his attorney, replies that there is such a record of the recovery remaining in the said court as is in the declaration alleged. And the plaintiff prayed leave to amend his declaration, and the court considering the defect therein as not material to the merits of the case, and that the defendant cannot be prejudiced, allows the amendment to be made without imposing terms. And thereupon the record of the supposed recovery in the declaration aforesaid mentioned being seen and inspected, it seems to the court here that there is such a record of the said recovery as by the said declaration is supposed.

Therefore, it is considered by the court that the plaintiff have

judgment and execution against the defendant for the sum of four thousand five hundred and forty-six dollars, with interest after the rate of six per centum per annum on four thousand dollars, part thereof, from the first day of June, in the year 1856, until paid, and his costs by him about the prosecution of this suit expended, and the said defendant in mercy, &c.

The transcript of the judgment in the declaration mentioned, brought by the plaintiff into court, is in the words and figures following, to wit:

Sixth Circuit of the United States of America, South Carolina district.—The President of the United States of America to the Marshal of the said district, greeting:

You are hereby commanded, without delay, to summon the Insurance Company of the Valley of Virginia, a body corporate, created by an act of the legislature of Virginia, and a citizen of the State of Virginia, wheresoever it may be found within the aforesaid district, so that you compel it to be and appear before the clerk of the circuit court of the United States of America for the aforesaid circuit and district, at the rules to be holden at Charleston, in the aforesaid district, on the first Monday in September next, to answer to Moses C. Mordecai, a citizen of the State of South Carolina, in a plea of trespass on the case, and so forth, and also for certain promises and assumptions by the said Insurance Company of the Valley of Virginia, to the said Moses C. Mordecai, made and not performed, to the damage of the said Moses C. Mordecai eight thousand dollars, and have you then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and fifty-six, and in the 80th year of the sovereignty and independence of the United States of America.

BROWN & PORTER,
Plaintiff's Attorneys.

Endorsed: We appear for the defendant.

PETIGRU & KING.

23d June, '56.

[This paper should be embraced in the declaration, but, in making the copy, the clerk at Staunton had to copy literally the transcript of the record filed by pl'ff.]

Sum insured $

No.

INSURANCE COMPANY OF THE VALLEY OF VIRGINIA.

This policy of insurance witnesseth, that the Insurance Company of the Valley of Virginia, by these presents do cause

to be insured in the sum of , lost or not lost, at and from , upon , the called the , whereof is master for this present voyage , or whomsoever else shall be master of said vessel, or by whatever other name or names the said vessel or master thereof shall be named or called.

Beginning the adventure upon the said vessel as aforesaid, and upon the freight or property, from and immediately following the loading of said property on board said vessel, and to continue during the voyage aforesaid on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the freight and property until the property shall be safely landed.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accidents, without prejudice to this insurance. And in case of any loss or misfortune resulting from any peril insured against, the party insured engages for himself or themselves, his or their factors, servants, and assigns, to sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured, or any part thereof; to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk; and the acts of the assured or assurers, or of their joint or respective agents, in preserving, securing, or saving the property insured, in case of danger or disaster, shall not be considered or held to be a waiver or acceptance of abandonment; the company having been paid the consideration for this insurance by the assured, or his or their assigns, at the rate of .

Touching the adventures and perils which the said insurance company are contented to bear and take upon them in this voyage. They are of the seas, men of war, fires, enemies, pirates, rovers, assailing thieves, jettisons, letters of mart and counter mart, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners, unless the assured be owner or part owner of the vessel, (embezzlement and illicit trade excepted in all cases,) and all other perils, losses, or misfortunes that have or shall come to the hurt, detriment, or damage of the said vessel, freight, or property, or any part thereof: Provided, and is expressly agreed, That the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, musty, or mouldy, unless the same be caused by actual contact of sea or river water with the articles so damaged. And in the case of partial loss on dry goods, cutlery or other hardware, the loss shall be ascertained by a separation of the damaged from the undamaged portion of the damaged package or packages, respectively, and the sale of the damaged portion or

portions only, and not otherwise; and the same practice shall obtain as to all other merchandise, so far as practicable.

It is also agreed, that bar, bundle, rod, hoop, and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker ware and willows, manufactured or otherwise, cheese, salt, grain of all kinds, seeds of all kinds, fruits, whether preserved or otherwise, dry fish, vegetables, and roots, prepared or otherwise, rags, hempen yarn, bags, cotton bagging, and other articles used for cotton bagging, pleasure carriages, household furniture, musical instruments, looking-glasses, skins and hides, and all articles perishable in their own nature, are warranted by the assured free from average, (except general,) unless it happen by stranding, and amount to twenty per cent. on the whole aggregate value of such articles; hemp, leaf tobacco, tobacco stems, bread, Indian meal, matting, and cassia, (except in boxes,) free from average, (unless general,) under fifteen per cent. on the whole aggregate value of such articles; coffee in bags or bulk, pepper in bags or bulk, rice, sugar, flax, and saltpetre, free from average, (unless general,) under seven per cent. on the whole aggregate value of such articles.

And in case of loss, such loss to be paid in sixty days after proof of loss, proof of interest and adjustment exhibited to the assurers, the amount of the premium, or note given for the premium, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the assurers. But no loss or average shall in any case be paid under five per cent. on each passage, unless general:

Provided always, and it is further agreed, That if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Insurance Company of the Valley of Virginia shall be answerable only for so much of the amount as such prior insurance may be deficient towards fully covering the premises hereby insured, without any deduction for the insolvency of all or any of the underwriters; and the said Insurance Company of the Valley of Virginia shall return the premium upon so much of the sum by them insured as they shall be by such prior insurance exonerated from. And in case of any insurance upon the said premises subsequent in date to this policy, the said Insurance Company of the Valley of Virginia shall nevertheless be answerable for the full extent of the sum by them subscribed by them hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made.

It is also agreed, that vessel, freight, or property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband

of war; and also free from any charge, damage, loss, or claim, on account of injury to any other vessel or her cargo, arising from collision of the vessel herein named with such other vessel.

It is further agreed, that in case a total loss shall be claimed for or on account of any damage or charge to the said vessel, the only basis for ascertaining her value shall be her valuation in this policy; and if not valued herein, then her actual value at the port to which she belonged at the time of the inception of this risk.

And it is also agreed, that if the above-named vessel, upon a regular survey, shall be declared unseaworthy, by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be responsible on this policy. And if the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

And it is further agreed, that one-third shall be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured against (except on anchors and copper) as a commutation for the average difference between new and old, the remains of all articles replaced being considered as salvage, and accordingly deducted from the net loss; and instead of deducting one-third from the cost of re-coppering, there shall be deducted two and a half per cent. of the net cost of re-coppering, after deducting the value of the old copper and nails, for each and every month the copper shall have been on the vessel at the time when it is taken off; and if the copper shall have been on forty months or more, the cost of re-coppering shall be wholly excluded.

It is also agreed, that when the goods insured arrive at this port, no claim for loss or damage shall be allowed, unless the assured or consignee given notice to this company of the same within ten days after the landing, and also of any public sale intended to be made in consequence of such loss or damage, at least two days previous to such sale, and that the company are not liable for loss or damage by wet or exposure on goods insured, as on deck.

It is also agreed, that no liability is incurred under this policy for leakage on molasses or other liquids, unless occasioned by stranding, or collision with another vessel.

It is further agreed, that in case of capture or detention, the assured shall not have the right to abandon therefor, unless proof is exhibited of condemnation, or of the continuance of the detention by capture or arrest for at least ninety days. That the assured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall in such case have the liberty to proceed to another port not blockaded, which shall be substituted for the blockaded port; and in case of capture or detention, the assured renounce all claims against the assurers for demurrage, seamen's wages and provisions.

It is also agreed, that in all cases of return premium for short property or over-insurance, ten per cent. of the return premium shall be retained by the insurers.

It is also agreed, that no assignment of this policy shall be valid unless the premium has been paid, or the note given therefor is further secured by a previous endorsement of the person or persons for whose benefit said assignment is intended, and unless the consent of the insurers be first obtained.

In witness whereof, the president of the said Insurance Company of the Valley of Virginia hath hereunto subscribed his name, and caused the same to be attested by their secretary, at Winchester, Va., the day of , 185 , but the same shall not be valid until countersigned by—

Attest: , *President.*

, *Secretary.*

W. M. & J. C. MARTIN, *Agents.*

Messrs. Mordecai & Co. are insured in the sum of four thousand dollars on the freight of barque Susan, hence to Rio Janeiro and back to any port of discharge in the United States.

$4,000.—2 p. c., $80.

June 11th, 1855.

The first above entry in the name of Mordecai & Co. should have been to M. C. Mordecai, and the amount insured was valued at the sum insured.

W. M. & J. C. MARTIN, *Agents.*

30 May, 1856.

UNITED STATES OF AMERICA,

Sixth circuit, South Carolina district.

In the Circuit Court.

The Insurance Company of the Valley of Virginia, a body corporate and politic, a citizen of the State of Virginia, was attached to answer to Moses C. Mordecai, a citizen of the State of South Carolina, in a plea of trespass on the case, and so forth: Whereupon the said plaintiff, by Brown and Porter, his attorneys, complained, for that whereas the plaintiff heretofore, to wit, on the eleventh day of June, in the year of our Lord one thousand eight hundred and fifty-five, at Charleston, in the district and circuit aforesaid, according to the usage and custom of merchants, caused to be made a certain policy of insurance, purporting thereby and containing therein, that the said plaintiff, as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain, in part or in all, did make insurance in manner and form following, that is to say:

(See copy of insurance policy preceding this declaration.)

And certain memorandums were thereunto written, in manner and form following—that is to say:

"Mess. Mordecai & Co. are insured in the sum of four thousand dollars on the freight of bark Susan, hence to Rio Janeiro and back, to a port of discharge in the United States.

"$4,000.—2 p. c., $80 00.

"June 11th, 1855.

"The first above entry in the name of Mordecai & Co. should have been to M. C. Mordecai, and the amount insured was valued at the sum insured.

"W. M. & J. C. MARTIN, *Agents.*

"30 May, 1856."

As by said policy of insurance and memoranda, reference being thereunto had, will more fully and at large appear. And the said plaintiff in fact saith, that the said policy of insurance and memoranda were so made by the plaintiff as aforesaid for his use and benefit, and that he, the said plaintiff, did receive the order for and effect the said policy of insurance as aforesaid, to wit, at Charleston aforesaid, in the district and circuit aforesaid. Of all which said premises he, the said defendant, afterwards, to wit, on the eleventh day of June, in the year of our Lord one thousand eight hundred and fifty-five, at Charleston aforesaid, in the district and circuit aforesaid, had notice. And thereupon, afterwards, to wit, on the day and year aforesaid, at Charleston aforesaid, in the district and circuit aforesaid, in consideration that the plaintiff, at the special instance and request of the said defendant, had then and there paid to the said defendant a certain sum of money, to wit, the sum of eighty dollars of lawful money, as a premium or reward for the insurance of four thousand dollars, of and upon the said freight of the said bark Susan, in the said voyage in the said policy of insurance mentioned, and had then and there undertaken and faithfully promised the said defendant to perform and fulfil all things in the said policy of insurance contained, on the part and behalf of the insured to be performed and fulfilled, he, the said defendant, undertook, and then and there faithfully the said plaintiff, that he, the said defendant, would become and be an insured to the said plaintiff of the sum of four thousand dollars upon the said freight of the said bark Susan, in the said voyage in the said policy of insurance mentioned, and would perform and fulfil all things in the said policy of insurance mentioned on his part and behalf, as such insurer of the said sum of four thousand dollars, to be performed and fulfilled. And the said defendant then *then* and there became and was an insurer to the said plaintiff, and then and there duly subscribed by J. S. Carson, as president, and by C. S. F. as secretary, and countersigned by W. M. & J. C. Martin as agents in Charleston aforesaid, in the district and circuit aforesaid, the

policy of insurance, as such insurance of the said sum of four thousand dollars upon the said freight in the said bark Susan, upon the premises in the said policy in that behalf mentioned, to wit, at Charleston aforesaid, in the district and circuit aforesaid. And the said plaintiff further saith, that heretofore, to wit, on the tenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, divers goods of great value had been and were loaded and shipped at Rio de Janeiro aforesaid, in and on board the said bark Susan, in the said policy of insurance mentioned, to be carried and conveyed on freight in and on board the said bark Susan, in the said voyage, to wit, at Charleston aforesaid, in the district and circuit aforesaid; and that the said plaintiff was then and there, and from thence continually afterwards, until and at the time of the loss hereafter mentioned, interested in the said freight in the said policy of insurance and memoranda mentioned, and so shipped on board the said bark Susan as aforesaid, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured or caused to be insured thereon, to wit, at Charleston aforesaid, in the district and State aforesaid.

And the said plaintiff further saith, that heretofore, to wit, on the day and year last aforesaid, the said bark Susan, with the said freight on board thereof, departed and set sail from Rio de Janeiro aforesaid, on her said voyage towards Charleston aforesaid. And the said plaintiff further saith, that the said bark Susan, in the said policy of insurance and memoranda mentioned, with the said goods and merchandise so on board thereof as aforesaid, while she was proceeding on her said voyage, and before her arrival at her port of destination, sale, or final delivery in the said policy of insurance and memoranda mentioned, to wit, on the eleventh day of October, in the year of our Lord one thousand eight hundred and fifty-five, was, by the perils and dangers of the seas, and by stormy and tempestuous weather, and the violence of the winds and waves, bulged, broken, damaged, spoiled, and so injured that the said barque had to put back to Rio de Janeiro, and she was unable to proceed on said voyage, and the said voyage was broken up, and the same goods and merchandise had to be re-shipped in another vessel, whereby the said freight then and there became and was wholly lost to the said plaintiff, to wit, at Charleston aforesaid, in the district and circuit aforesaid; of all which the said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at Charleston aforesaid, in the district and circuit aforesaid, had notice, and was then and there requested by the said plaintiff, to pay him the said sum of four thousand dollars, so by him insured as aforesaid, and which sum of four thousand dollars he, the said defendant, then and there ought to have paid, according to the form and effect of the said policy of insurance and memorada thereunto written, and his said promise and untertaking so by him made

as aforesaid, to wit, at Charleston aforesaid, in the district and circuit aforesaid. And whereas the said defendant afterwards, to wit, on the day and year last aforesaid, to wit, at Charleston aforesaid, in the district and circuit aforesaid, was indebted to the plaintiff in four thousand dollars, for so much money by the said plaintiff before that time paid, laid out, and expended to and for the use of the defendant, at his special instance and request; and in four thousand dollars for so much money by the said defendant before that time, had and received to and for the use of the said plaintiff: And whereas also the said defendant afterwards, to wit, on the day and year last aforesaid, at Charleston aforesaid, accounted with the said plaintiff of any concerning divers other sums of money from the said defendant to the said plaintiff before that time due and owing, and then in money from the said defendant to the said plaintiff before that time due and owing, and then in arrear and unpaid, and upon such accounting the said defendant was then and there found to be in arrear and indebted to the plaintiff in the further sum of four thousand dollars, and being so found in arrear and indebted to the said defendant, undertook and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money whenever he should be thereunto afterwards requested; yet the said defendant his several promises and assumptions, in form aforesaid made, in nowise regarding, but craftily and subtly intending the said plaintiff in this behalf to deceive and defraud the aforesaid several sums of money, or any part thereof, hath not paid, but hath hitherto altogether refused, and still doth refuse: Wherefore the plaintiff saith that he is worse, and hath sustained damage to the value of eight thousand dollars; wherefore he brings suit, and so forth.

BROWN & PORTER,
Plaintiff's Attorneys.

And the said defendants, by Petigru & King, their attorneys, come and defend the wrong and injury, when, and so forth, and say that they did not undertake or promise, in manner and form as the said plaintiff hath within thereof complained against them, and of this they put themselves upon the country, and so forth.

PETIGRU & KING,
Def't's Att'ys.

(*Endorsed:*)

Filed 23 Nov., 1857—Plea filed and issue joined same day—Brown and Porter, pl'ff's att'ys—We find for pl'ff, M. C. Mordecai, the sum of $4,000; interest on the same from 1st day of June, 1856—A. D. Hill, foreman—1st Dec., 1857—Filed 25 Dec., 1857.

And the said plaintiff similiter.

BROWN & PORTER,
Pl'ff's Att'ys.

Postea and judgment on issue tried, and verdict for plaintiff. Therefore it is commanded that *that* the marshal of So. Carolina district do summon forty-eight good and lawful men, to be drawn by ballot, according to the directions of the act of Congress of the said States in such case made and provided, to be and appear before the justices at the circuit court to be holden at Columbia, on the 4th Monday of November next, by whom and so forth, and who neither and so forth, to recognise and so forth, because as well and so forth, and the same day given to the parties aforesaid, at the place aforesaid. And afterwards—that is to say, on the day and at the place aforesaid, before the justices aforesaid, come as well the said M. C. Mordecai, by his attorneys aforesaid, as the said insurance company of Virginia, by their attorney aforesaid, and the jurors aforesaid being demanded, one of them, to wit, A. D. Hitt, and others, come, and being drawn by ballot, according to the directions of the said acts of the general assembly aforesaid, and sworn of the jury aforesaid, to say the truth of the within contained, do, on their oath, say that *the* find for the plaintiff, M. C. Mordecai, the sum of four thousand dollars, and int. on the same from the 1st day of June, 1856, as the said M. C. Mordecai above, in his declaration, hath alleged against the defendant; and they assess the damages of the said M. C. Mordecai, by reason of said promises and assumptions, over and above his costs and charges by him about his suit in this behalf expended, to four thousand four hundred and twenty dollars. Therefore it is considered that the said M. C. Mordecai do recover against the defendant damages so found by the jurors aforesaid; and also one hundred and twenty-six for his costs and charges aforesaid, to the said M. C. Mordecai, by the said court, now herewith his assent adjudged; which said damages, costs, and charges, amount in the whole to four thousand five hundred and forty-six dollars; and be the said the Insurance Company of the Valley of Virginia in mercy, and so forth.

BROWN & PORTER,
Pl'ff's Att'ys.

Judgment signed 2 Dec'r, 1857.

H. Y. GRAY, *C. C. C.*

Statement.

Verdict	$4,000
Int. 1½ years	420
	4,420
Costs	126
	$4,546

Att'y	$38
Cl'k	16
Marshal	2
Comm'r to take test'y	70
	$126

U. S. A.

U. S. Circuit Court, So. Carolina district.

I do hereby certify that the foregoing and annexed sheets contain a true transcript of the record of the judgment in the within entitled case, entered up on the second day of December, in the year of our Lord 1857.

Witness my hand and the seal of said court, this twenty-sixth day of May, one thousand eight hundred and fifty-eight.

[SEAL.]

H. Y. GRAY, *Clerk.*

I do hereby certify that Henry Y. Gray, whose name in his own proper hand is subscribed to the foregoing certificate, is the clerk of the U. S. circuit court for the said district, and that the above authentication is in due form of law.

Given at Charleston, this 26th day of May, 1858.

A. G. MAGRATH,
Judge for the U. States for the Dist. of So. Ca.

And afterwards, to wit, on the 18th day of said month, in the year last aforesaid, the following citation and writ of error were issued and filed in the clerk's office at Staunton aforesaid:

UNITED STATES OF AMERICA, *ss.*

To Moses C. Mordecai, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the western district of Virginia, at Staunton, wherein you are defendant, and the Insurance Company of the Valley of Virginia is plaintiff in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. John W. Brockenbrough, judge of the district court of the United States for the western district of Virginia, this 18th day of October, in the year of our Lord 1858.

[SEAL.]

JOHN W. BROCKENBROUGH.

Endorsed: Mc. & Skinner, for Insurance Company.

2965

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judge of the District Court of the United States for the western district of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Moses C. Mordecai, plaintiff, and the Valley Insurance Company of the Valley of Virginia, a manifest error hath happened, to the great damage of the said Insurance Company of the Valley of Virginia, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under our seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what *if* right and according to the law and custom of the United States should be done.

Witness the Hon. R. B. Taney, Chief Justice of the said Supreme Court of the United States, this day of October, in the year of our Lord 1858, and in the 83d year of the independence of the United States of America.

JOHN W. BROCKENBROUGH,
Judge D. C. U. S. W. D. Va.
JOS. W. CALDWELL,
Cl'k Dis. Court U. States Wes. Dis. of Virginia.

(*Endorsed:*)

1858, October 18th.—Filed in clerk's office of district court of U. States W. district of Virginia, at Staunton.

J. W. CALDWELL, *Cl'k.*

Since the final judgment in this cause, to wit, on the 22d day of October, in the year 1858, the plaintiff, by his attorney, came into the said office and filed a release in the words and figures following, to wit:

District Court of the United States for the western district of Virginia, holden at Staunton.

Whereas Moses C. Mordecai, a citizen of the State of South Carolina, at the October term of said court, in the year 1858, to wit, on the 7th day of October, 1858, obtained in said court a

judgment against the Insurance Company of the Valley of Virginia for the sum of four thousand five hundred and forty-six dollars, with interest on four thousand dollars, part thereof, from the 1st day of June, 1856: and whereas the said judgment should properly have been for the sum of four thousand five hundred and forty-six dollars, with interest on four thousand dollars, part thereof, from the 1st day of December, 1857, as appears from the record of a judgment of the district court of the United States for the South Carolina district, upon which this last judgment is founded, and which is filed in the papers of the cause remaining in the said district court at Staunton: Now, therefore, for the correction of the said error to the prejudice of the said defendant in said judgment, the said Moses C. Mordecai, the pl'ff, doth, in pursuance of the statute in such cases made and provided, release so much of the said judgment as is for the interest on four thousand dollars, from the 1st day of June, 1856, to the 1st day of December, 1857, and doth consent and agree that the said judgment shall stand amended and operate only for the sum of $4,546, with interest on $4,000, part thereof, from the 1st day of December, 1857.

MOSES C. MORDECAI,
By JOHN B. BALDWIN,
His Counsel.

Oct. 22, 1858.

Teste:

N. K. TRONT, *D. C.*,
For JOS. W. CALDWELL,
Cl'k U. S. Ct. W. D. Va.

VIRGINIA, *to wit:*

Clerk's office of the United States court for the western district of Virginia, at Staunton.

I, Joseph W. Caldwell, clerk of said court, do certify that the foregoing is a true and full transcript of the record and proceedings, with all things concerning the same, of an action lately depending in said court at Staunton, in which Moses C. Mordecai is plaintiff, and the Insurance Company of the Valley of Virginia is defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Staunton, this 22d day of November, in the year 1858, and in the 83d year of the independence of the United States of America.

[SEAL.]

JOS. W. CALDWELL,
Cl'k U. S. Ct. W. D. Va.

STATE OF VIRGINIA, *ss.*

I, John W. Brockenbrough, judge of the district court of the

United States for the western district of Virginia, do hereby certify that Joseph W. Caldwell, who has given the foregoing certificate, is clerk, as he has therein stated, and that his attestation is in due form of law.

Witness my hand, this 22d day of November, 1858.

JOHN W. BROCKENBROUGH, *Judge.*

Fee for copy of record, affixing seal, &c., $10 68.

Filed 22 Dec., 1858.